

Applicant(s): P. Bonutti and M. Brillhart  
Application No.: 10/630,321  
Examiner: G. Jackson

### Remarks

#### **Election/Restriction**

Applicants hereby elect to restrict the above-entitled application to the invention of claims 11-20 and 27-36, designated as Group I in the Office Action. Also, if no generic claim is finally held to be allowable, Applicants hereby provisionally elect, with traverse, the species of FIGS. 11A, 11B, and 11C. In accordance with the Examiner's request, Applicants respectfully submit that the following claims read on the elected species: 11-14, 17-20, and 27-34.

In this Response, Applicants have elected Group I and provisionally elected, with traverse, the Species of FIGS. 11A, 11B, and 11C. Further, Applicants have provided a list of all claims readable thereon.

Applicants traverse the election of species requirement as unnecessary given that a significant number of claims are generic with respect to the species of FIGS. 7(A-C), FIGS. 8(A-I), FIGS 9(A-C), FIG. 10, and FIGS. 11(A-C). Furthermore, both the search and examination of all claims can be made without serious burden. For example, all claims recite a device that comprises an implant and a polymeric material with a therapeutic agent. Thus, regardless of whether all claims are examined together or separately, a review of the prior art for these claim recitations is required so that search and examination of all claims does not present a serious burden. Accordingly, an examination of all claims on the merits is required, even if the application includes claims to distinct or independent inventions. *See* MPEP § 803. If the election of species requirement is not withdrawn, Applicants request a modification of the requirement.

In light of the foregoing, Applicants respectfully request reconsideration and withdrawal or, at least modification of the requirement.

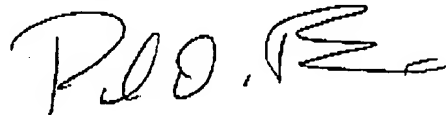
#### **Conclusion**

In light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

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A fee of \$60.00 for a One Month Extension of Time (small entity rate) is believed to be due with this submission and a Fee Transmittal Sheet including this fee is submitted concurrently herewith. However, please charge the required fee (or credit overpayments) to the Deposit Account of the undersigned, Account No. 500601 (Docket no. 780-A02-015-10).

Respectfully submitted,



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